

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1087/2013**

**New Delhi this the 02<sup>nd</sup> day of February, 2016.**

**Hon'ble Sh. V. Ajay Kumar, Member (J)  
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Ex. Constable (Exe.) Parveen Kumar,  
(751/E, PIS no. 28980533),  
s/o Sh. Mahesh Bal,  
r/o. Village Band Pur, PO Sunahera,  
District Baghpat (UP).  
Group 'C', Aged- yrs. ...  
(By Advocate: Mr. Sourabh Ahuja)

Applicant

Versus

1. GNCT of Delhi,  
Through Commissioner of Police,  
Police Head Quarters, IP Estate,  
MSO Building, New Delhi.
2. Deputy Commissioner of Police,  
East District, New Delhi.  
Through Commissioner of Police,  
Police Head Quarters, IP Estate,  
MSO Building, New Delhi.
3. Joint Commissioner of Police,  
New Delhi Range, Delhi.  
Through Commissioner of Police,  
Police Head Quarters, IP Estate,  
MSO Building, New Delhi. ...  
(By Advocate: Mr. N.K. Singh for Mr. Avnish Ahlawat)

Respondents

**ORDER (ORAL)**

**Mr. V. Ajay Kumar, Member (J)**

Heard both sides.

2. The applicant was dismissed from service while working as constable vide Annexure 2 Order dated 05.09.2003 under Article 311(2)(b) of the Constitution of India, keeping in view his involvement

in various criminal offences. The appeal filed against the said order was also dismissed by the appellate authority.

3. The judicial proceedings initiated against the said orders of the respondents have ended in dismissal up to the Hon'ble Apex Court. However, during the period 2008-2012, according to the applicant, all the criminal cases initiated against him were ended in clean acquittal. In view of the said acquittal, he preferred Annexure 11 representation dated 27.03.2012 requesting the respondents to reconsider his case and to re-instate him in service in view of the acquittal in all the criminal cases filed against him. However, the respondents vide the impugned Annexure R-8 dated 30.04.2012 rejected the said representation by stating that there is no provision in Delhi Police (Punishment & Appeal), Rules-1980 for 2<sup>nd</sup> appeal/revision. Aggrieved by the said action, present OA has been filed.

4. Learned counsel for the applicant, Mr. Sourabh Ahuja, while drawing attention of this Tribunal to the Annexure 10 judgment of a Full Bench of this Tribunal in **Sukhdev Singh and Ors. versus Govt. of NCT of Delhi** in OA 2816/2008 dated 18.02.2011, submits that in view of the categorical finding of this Tribunal in the said judgment, the applicant's case is required to be revisited by the respondents

and they cannot refuse his representation by treating it as second appeal/revision.

5. Mr. Singh appearing for the respondents, while not disputing the existence and implication of the said decision of the Full Bench of this Tribunal, submits that the acquittal of the applicant is not a clean acquittal and that he is not entitled for the relief claimed.

6. It is seen that the Full Bench of this Tribunal in **Sukhdev Singh and Ors.** (supra) observed as under:

“6. From the discussion as made above, we are of the view that there is no difficulty if the employer may proceed only criminally against an employee. In that case, departmental proceedings may be held or not, the field is absolutely covered under rules 11 and 12 of the Rules of 1980. The difficulty will arise only in case, the order of punishment in departmental proceedings is earlier to the order passed by the criminal court, and that too when the verdict of the criminal court is that of acquittal and the circumstances are such as envisaged in rule 12 that no departmental enquiry can be held. In such a situation, as mentioned above, we are of the view that since a judicial order takes precedence over an order passed in departmental proceedings, it is the judicial verdict which has to be given effect, and, therefore, in that situation the order passed in departmental proceedings shall have to be re-visited and changed, modified or set at naught, as per the judicial verdict. This is the only way that appears to us to reconcile the situation which may arise only in the circumstances as mentioned above. This course to be adopted otherwise also appears to be one which will advance the cause of justice. It may be recalled that as per provisions contained in rule 11 of the Rules of 1980, a subordinate rank on his conviction can be dismissed or removed from service. Of course, as mentioned above, the result of the appeal that he may have filed shall have

to be awaited. Once, he is acquitted in a second appeal or revision filed by him, he has to be reinstated, meaning thereby, if the order of his dismissal or removal from service has already been passed, the same has to be set at naught. Once, an order of dismissal or removal passed on conviction of the subordinate rank has to be reviewed on his acquittal later in point of time, we find no reason as to why the same procedure cannot be adopted in a case where the subordinate rank may have been held guilty of the charges framed against him, but later acquitted by the criminal court. We are conscious that as regards the first situation as mentioned above, the rules take care of it, whereas, for the situation in hand, the rules are silent, but since the settled law on the issue is that, rule or no rule, if on clean acquittal the order of punishment passed in departmental proceedings has to be re-visited or set at naught, why this provision cannot be read into the rules.

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9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict in criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in rule 12, the order of punishment shall be re-visited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs."

7. In view of the categorical observations made by the Full Bench of this Tribunal, we are of the considered view that the applicant is entitled for revisiting of his case in terms of Rule 12 of the Delhi Police (Punishment & Appeal), Rules-1980, on merits.

8. In the circumstances, the impugned order dated 30.04.2012 (Annexure A1) is set aside and the respondents are directed to

consider the representation (Annexure 11) dated 27.03.2012 of the applicant in accordance with the Rules by keeping in view the Full Bench decision in **Sukhdev Singh and Ors.** (supra) of this Tribunal and pass appropriate speaking and reasoned orders thereon within 60 days from the date of receipt of a copy of this order, in accordance with law. No costs.

**(Shekhar Agarwal)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

/ns/